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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,426

05/16/2006

Werner Lubitz

2923-746

8425

6449

7590

10/30/2007

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

NOTIFICATION DATE

DELIVERY MODE

10/30/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,426	<b>Applicant(s)</b> LUBITZ, WERNER	
	<b>Examiner</b> Rodney P. Swartz, Ph.D.	<b>Art Unit</b> 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 13 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

**DETAILED ACTION**

1. Applicant's Response to Office Action, received 13 August 2007, is acknowledged. Claims 1, 2, 7, 8, 17, and 18 have been amended. Claims 13 and 19 have been canceled.
2. Claims 1-12 and 14-18 are pending and under consideration.

**Rejections/Objections Moot or Withdrawn**

3. The rejection of claim 19 under 35 U.S.C. 101, is moot in light of the cancelation of the claim.
4. The rejection of claims 13 and 19 under 35 U.S.C. 112, second paragraph, as being indefinite for "the fusion" is moot in light of the cancelation of the claims.
5. The rejection of claim 19 under 35 U.S.C. 112, second paragraph, as being indefinite for not setting forth any steps involved in the method/process, is moot in light of the cancelation of the claim.
6. The rejection of claim 19 under 35 U.S.C. 112, first paragraph, scope of enablement for "use" of ghosts in the fields of medicine, agriculture, and biotechnology, is moot in light of the cancelation of the claim.
7. The objection to Figures 5 and 6 is withdrawn in light of the newly submitted replacement figures.
8. The rejection of claims 17-18 under 35 U.S.C. 101, is withdrawn in light of the amendment of the claims.
9. The rejection of claims 1-12 and 14-18 under 35 U.S.C. 112, second paragraph, as being indefinite for "the fusion" is withdrawn in light of the amendment of the claims.

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10. The rejection of claims 17-18 under 35 U.S.C. 112, second paragraph, as being indefinite for not setting forth any steps involved in the method/process, is withdrawn in light of the amendment of the claims.

11. The rejection of claim 2 under 35 U.S.C. 112, second paragraph, as being indefinite for Markush group wording, is withdrawn in light of the amendment of the claim.

12. The rejection of claims 7 and 8 under 35 U.S.C. 112, second paragraph, as being indefinite for "derived" is withdrawn in light of the amendment of the claims.

13. The rejection of claim 13 under 35 U.S.C. 112, second paragraph, as being indefinite for "substances", is moot in light of the cancelation of the claim.

14. The rejection of claims 17-18 under 35 U.S.C. 112, first paragraph, scope of enablement for "use" of ghosts in the fields of medicine, agriculture, and biotechnology, is withdrawn in light of the amendment of the claims.

#### **Claim Rejections - 35 USC § 112**

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claims 1-12 and 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are drawn to a method for preparing closed bacterial ghosts (and closed ghosts prepared by said methods), comprising bringing ghosts into contact with carrier materials characterized in that the closure is mediated by way of specific interactions between the partners of a bioaffinity binding pair, which partners are anchored on the ghosts "and/or" the carrier materials.

It is unclear how the closure is performed in the embodiments where the bioaffinity binding pair is only anchored onto the carrier materials and there are no binding partners attached to the bacterial ghost.


### **Conclusion**

17. No claims are allowed.
18. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 7:30 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's acting Supervisor, Bruce Campell, can be reached on (571)272-0974.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RODNEY P. SWARTZ, PH.D.  
PRIMARY EXAMINER  
Art Unit 1645

October 23, 2007